a ruinous wall, which was declared a nuisance, being held liable. *Regina* v. *Watts*, 1 Salk. 357, and *Mullen* v. *St. John*, 57 N. Y. 567, is decided on same ground.

LEASE—WHAT CONSTITUTES—GOLDMAN v. NEW YORK ADVERTISING CO., 60 N. Y. Sup. 275.—The relation of landlord and tenant is not created where for compensation one person gives another authority to use the wall of a house for advertising purposes for a specified time.

Both appellant and defendant invoke legal principles that obtain between landlord and tenant. The relation of landlord and tenant did not exist, as the contract between the parties was not one for the possession and profits of lands or tenements neither was it for the possession or right of possession to the realty. In *Lowell* v. *Strahan*, 145 Mass. 1, it was held that affixing a sign to the wall in consideration of an annual payment was a license, and not a lease. It was permission to do a particular act, and gave no authority to do any other act upon the premises.

MASTER AND SERVANT—GROUNDS FOR DISCHARGE—EMPLOYERS' GOOD FAITH—MISCONDUCT—CONTRACT OF EMPLOYMENT—EMPLOYEE'S RIGHTS—ALLEN v. AYLESWORTH ET AL., 44 Atlan. 178 (N. J.).—An employee whose faithful service was sought by execution of a bond in his favor for an additional remuneration in event of such faithful service, was discharged for endeavoring to make secret examination of the employers' books. *Held*, that this was a breach of contract on part of employee, and employers were entitled to discharge him.

The court thoroughly exploits the right of a master to discharge an employee on grounds all of which are not assigned at time of discharge. This matter is well settled, for a master is never under obligation to assign any reason for dismissal of a servant, provided he can show that good and sufficient cause for dismissal existed at the time of discharge; *Sterling Emory Wheel Co.* v. *Magee*, 40 Ill. App. 340, and further reasons for discharge may be assigned even though *unknown* to master at the time the discharge was made. *Odeneal* v. *Heung*, 70 Miss. 172. This is now the general American doctrine. In the present case, the original cause for dismissal was the unauthorized and clandestine examination of the master's books, and this is held to be adequate cause for discharge as a breach of an implied condition of employment. There are cases in which the betrayal of the employers' secrets of trade was good ground for discharge, but the present case seems without precedent, as there was simply an endeavor to acquire the trade secrets of the employers. The court seems to apply the general rule correctly, as such an act would be a breach of a contract for good and faithful service. Further, it is held that the anticipation by the master of disobedience to orders by the servant does not constitute bad faith on the part of master in discharging such employee for the unauthorized examination of books. *Smith, Master and Servant*, p. 150, 151.

MUNICIPAL CORPORATIONS—ACTION FOR PERSONAL INJURIES—LIABILITY FOR ACTS OF STREET CLEANING DEPARTMENT—MISSONS ET AL. v. MAYOR, ETC., OF THE CITY OF NEW YORK, 54 N. E. 744 (N. Y.).—The negligence of the driver of an ash cart, employed in the street cleaning department, caused the death of plaintiff's intestate. *Held*, that the city was liable, as it was acting in its private capacity as distinguished from its governmental functions.

Judges O'Brien and Gray dissent and follow the doctrine of *Maxmilian* v. *Mayor, etc.*, 62 N. Y. 160, and *Ham* v. *Mayor, etc.*, 70 N. Y. 459. These two cases have been authoritative until reversed by the present case. While it is well settled that the city cannot be held liable while exercising its governmental functions, there is a conflict as to when the city is so acting. In *Jewett* v. *City of New Haven*, 38 Conn. 368, it was held that the fire department, established and organized under the provisions of the city charter, while engaged in extinguishing fires, was performing a public, governmental act, and that the city could not be held liable for injuries received through the negligence

or misconduct of such department. In *Hill* v. *City of Boston*, 122 Mass. 344, it was held that a child attending a public school in a schoolhouse provided by a city pursuant to a duty imposed upon it by the general laws, could not maintain action against the city for an injury caused by reason of the unsafe condition of a staircase over which he was passing. In *Barnes* v. *District of Columbia*, 91 U. S. 540, it was held that a city was responsible for an injury caused owing to the defective condition of a street.

NEGLIGENCE—CONTRIBUTORY NEGLIGENCE—QUIRK v. SIEGEL-COOPER CO., 60 N. Y. Sup. 228 (Supreme Court, Appellate Division, Second Department).—*Held*, "The placing of a slippery slide in the middle of a section of stairway over which customers were invited to ascend and descend, in such a way as not to be likely to attract the attention of shoppers familiar with the stairway, and without any means being adopted to warn such customers, is negligence. Evidence that plaintiff, who was injured by slipping on the slide, had passed down such stairway the day before, when no slide was there, and that there was nothing to suggest danger unless she had looked directly where she intended to place her foot, and the light was somewhat obscured, is sufficient to sustain a finding that she was not guilty of contributory negligence."

The general rule of a storekeeper towards customers invited into his store to trade is to exercise reasonable care to keep the building safe for the use of such customers, and under it the placing of a *permanent* slide over such a flight of steps would not appear to be such lack of care as to amount to negligence, since the slide would be visible to one ordinarily watchful of his movements, and since, per statement of facts, there was abundant room to descend the steps without going upon the slide. Nor would the temporary occupation of a portion of the steps by a slide for trucks be wrongful *in itself*. The ground of the court in holding the defendant guilty of negligence lay in the fact that the obstruction was temporary, "and so nearly on a level with the steps as not to be likely to attract the attention of shoppers familiar with the stairs, but having no previous experience of any such obstruction upon them. The defendant should have adopted some method of warning customers of the presence of the obstacle."

In regard to the question of contributory negligence on the part of plaintiff, the fact that the slide was temporary and had not been there when plaintiff passed the same stairs the day before, was conclusive in determining that plaintiff was not negligent. Ordinarily a person who exercises ordinary care is bound to look where he sets his foot, but in a case such as this, where the surroundings are familiar and there *is nothing to lead the passer to suppose that the premises have been altered*, ordinary care would not demand an inspection of the locality. "Contributory negligence is not always the consequence of failure to exercise the greatest prudence or to make use of the best judgment." *McRichards* v. *Flint*, 114 N. Y. 222, 21 N. E. 153. Because of the low level of the slide and the obscured light there was no indication of danger unless the plaintiff looked directly where she intended to step, and from this close inspection she was excused because she was familiar with the steps and they had not been obstructed when she last used them.

PATENTS—VALIDITY—INVENTIONS IN FOREIGN COUNTRY—HANIFEN v. PRICE, 96 Fed. 435.—One who has made an invention in a foreign country, and has introduced the article into commercial use there before the granting of any foreign patent or the description of the invention in any publication, may, upon obtaining a patent in this country, carry back the date of his invention to the actual time of making such invention in a foreign country so as to overcome the defense of prior use in this country.

This is a new point, and although this decision of the circuit court upholds the view previously taken on the same subject in *Hanifen* v. *E. H. Godshalk Co.*, 78 Fed. 811, we may expect to find still further adjudication on it. It seems to be decided on the principle in *Seymour* v. *Osborne*, 11 Wall. 516,